



February 19, 2003

HOUSE BILL No. 1679

DIGEST OF HB 1679 (Updated February 13, 2003 1:29 PM - DI 108)

Citations Affected: IC 32-28; noncode.

Synopsis: Mechanic's liens. Provides that a contract to prepare property for Class 2 residential construction may include a no lien provision or stipulation. Establishes an interim study committee to study mandatory notice of no lien contracts for residential construction. Provides that the committee consists of eight members of the general assembly. Requires the committee to issue a final report before November 1, 2003.

Effective: Upon passage; July 1, 2003.

Brown C, Burton

January 21, 2003, read first time and referred to Committee on Financial Institutions.
February 18, 2003, amended, reported — Do Pass.

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February 19, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1679

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-28-3-1, AS AMENDED BY P.L.101-2002,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 1. (a) A contractor, a subcontractor, a mechanic,
4 a lessor leasing construction and other equipment and tools, whether or
5 not an operator is also provided by the lessor, a journeyman, a laborer,
6 or any other person performing labor or furnishing materials or
7 machinery, including the leasing of equipment or tools, for:

8 (1) the erection, alteration, repair, or removal of:

9 (A) a house, mill, manufactory, or other building; or

10 (B) a bridge, reservoir, system of waterworks, or other
11 structure; ~~or~~

12 (2) the construction, alteration, repair, or removal of a walk or
13 sidewalk located on the land or bordering the land, a stile, a well,
14 a drain, a drainage ditch, a sewer, or a cistern; or

15 (3) any other earth moving operation;

16 may have a lien as set forth in this section.

17 (b) A person described in subsection (a) may have a lien separately

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or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract: ~~for the construction, alteration, or repair of:~~

(1) **for the construction, alteration, or repair of** a Class 2 structure (as defined in IC 22-12-1-5);

(2) **for the construction, alteration, or repair of** an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); ~~or~~

(3) **for the construction, alteration, or repair of** property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);



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- (ii) municipally owned utility (as defined in IC 8-1-2-1);
- (iii) joint agency (as defined in IC 8-1-2.2-2);
- (iv) rural electric membership corporation formed under IC 8-1-13-4;
- (v) rural telephone cooperative corporation formed under IC 8-1-17; or
- (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; **or**

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

- (1) be in writing;
- (2) contain specific reference by legal description of the real estate to be improved;
- (3) be acknowledged as provided in the case of deeds; and
- (4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

- (1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;
- (2) index the contract in the name of the:
 - (A) contractor; and
 - (B) owner;
- in books kept for that purpose; and
- (3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or

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corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

- (1) a contractor, subcontractor, mechanic; or
- (2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

- (1) furnish the owner of the real estate:
 - (A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
 - (B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;
 with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and
- (2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this



1 **SECTION, "committee" refers to the interim study committee on**
2 **mechanic's liens established by this SECTION.**

3 **(b) There is established the interim study committee on**
4 **mechanic's liens. The committee shall study mandatory notice of**
5 **no lien contracts for residential construction.**

6 **(c) The committee shall operate under the policies governing**
7 **study committees adopted by the legislative council.**

8 **(d) The committee consists of eight (8) members of the general**
9 **assembly appointed as follows:**

10 **(1) The speaker of the house of representatives shall appoint**
11 **four (4) representatives, not more than two (2) of whom are**
12 **members of the same political party.**

13 **(2) The president pro tempore of the senate shall appoint four**
14 **(4) senators, not more than two (2) of whom are members of**
15 **the same political party.**

16 **(e) At the time the committee members are appointed, the**
17 **chairman of the legislative council shall appoint a member of the**
18 **committee to be chairperson of the committee. A member of the**
19 **committee serves as chairperson at the pleasure of the appointing**
20 **authority who appointed the member to the office.**

21 **(f) If a vacancy occurs on the committee, the vacancy shall be**
22 **filled by the appointing authority making the original appointment.**

23 **(g) The affirmative votes of a majority of the voting members**
24 **appointed to the committee are required for the committee to take**
25 **action on any measure, including a final report.**

26 **(h) The committee shall issue a final report before November 1,**
27 **2003.**

28 **(i) This SECTION expires November 1, 2003.**

29 **SECTION 3. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1679, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1679 as introduced.)

BARDON, Chair

Committee Vote: yeas 12, nays 0.

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